

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Conception Junction Post Office
Conception Junction, Missouri

Docket No. A2012-5

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

December 21, 2011

I. INTRODUCTION

On October 5, 2011, the Commission received correspondence from postal customer Richard L. Holtman objecting to Postal Service's decision to close the Conception Junction, Missouri Post Office (Conception Junction Post Office).¹ Accompanying the correspondence was a petition signed by 85 customers of the Conception Junction Post Office. The Postal Service's decision, which is the subject of this proceeding, was made on September 1, 2011.²

On October 7, 2011, the Commission issued an order instituting the current review proceedings, appointing the undersigned Public Representative, and establishing a procedural schedule.³

¹ See Letter of Richard L. Holtman, October 5, 2011 (Petition for Review).

² Final Determination to Close the Conception Junction, MO Post Office and Establish Service by Rural Route Service, September 1, 2011 (Final Determination). The Final Determination was included as Item No. 47 in the Administrative Record (AR) filed by the Postal Service on October 20, 2011. Citations to the Final Determination will use the abbreviation "FD" followed by the page number, rather than to AR Item No. 47. All other items in the Administrative Record are referred to as "AR Item No. ____"

³ Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 7, 2011 (Order No. 901).

II. STATEMENT OF FACTS

The Conception Junction Post Office is located at 609 S. Main Street, Conception Junction, Missouri, 64434-9998. AR Item No. 4. The Conception Junction Post Office provides service to 46 post office box customers, 150 delivery customers, and retail customers 37 hours per week. *Id.* There are no permit mailers or postage meter customers. AR Item No. 33.

On March 29, 2011, the Postal Service notified customers of the Conception Junction Post Office of a "possible change in the way your postal service is provided." AR Item No. 21. The notice informed customers that pickup and delivery services, as well as the sale of stamps and all other customer postal services, would be provided by rural route carriers emanating from the Stanberry Post Office. *Id.* Customers with post office boxes were informed that post office box service "is available at the [Stanberry] location at the same fees." *Id.* The Stanberry office is located approximately 10 miles away, and there are two other post offices within a 2 mile radius. *Id.* Customers were also invited to attend a public meeting on April 14, 2011, where postal representatives "would answer questions and provide information about our service." The meeting was held on April 14th as scheduled with 30 customers indicating attendance. AR Item No. 24. In addition, customers were asked to complete and return a questionnaire accompanying the notice by the date of the public meeting. AR Item No. 21.

On August 8, 2011, the Postal Service posted for the first time its Final Determination to close the Conception Junction Post Office.⁴ At that time, the complete administrative record was not available for public inspection "[d]ue to an error." *Id.* On September 1, 2011, the Final Determination was subsequently "re-stamped and re-posted at all four affected Post Offices (Conception Junction Post Office, Conception Post Office, Stanberry Post Office, and Clyde Post Office) to allow for the mandatory 30-day posting period." *Id.* During this period, an electronic version of the complete

⁴ United States Postal Service Comments Regarding Appeal, November 29, 2011 (Postal Service Comments), at 3, fn. 6.

administrative record was provided to each affected office, which was to be made available to customers for review in printed form upon request. *Id.*

The decision to close was based upon (1) a decline in workload; (2) effective and regular service will continue to be provided by rural route service emanating from the Stanberry Post Office; and (3) estimated annual savings to the Postal Service of approximately \$66,295. FD at 9. The Final Determination also responded to various concerns expressed by postal customers in the questionnaires and at the April 14, 2011, public meeting. *Id.* at 2-8.

III. POSITIONS OF THE PARTIES

A. The Petitioner

In its initial brief filed November 9, 2011, Petitioner argues that the Postal Service “did not observe procedure required by law by not providing the COMPLETE, entire official record to customers during [the] Final Determination period.”⁵ In a reply brief, Petitioner reiterates his argument that while “the official record was provided by the Postal Service . . . it was not the complete official record as required.”⁶ [Emphasis original] Petitioner also provides along with his reply brief a “copy of the official record [], what was available for viewing” during the 30-day posting of the Final Determination. *Id.*

B. The Postal Service

In PRC Order No. 901, the Commission directed the Postal Service to “file the applicable administrative record in this appeal.”⁷ On October 20, 2011, the Postal Service provided an electronic version of the administrative record.⁸

⁵ Participant Statement (PRC Form 61), November 9, 2011 (herein “Initial Brief”), at 1.

⁶ Reply Brief to United States Postal Service Comments Regarding Appeal, Conception Junction Post Office, received December 14, 2011 (herein “Reply Brief”), at 1.

⁷ Order No. 901 at 5. .

On November 29, 2011, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 901.⁹ In that filing, the Postal Service argues that: (1) it has met all the procedural requirements of section 404(d); and (2) it has considered all pertinent criteria, including the effect of the closing on postal services, the community, employees, and the economic savings from the discontinuance of the Conception Junction facility. *Id.* at 14.

IV. STANDARD OF REVIEW AND APPLICABLE LAW

A. Standard of Review

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service. Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

⁸ See United States Postal Service Notice of Filing, October 13, 2011 (Notice). The Notice stated that the Postal was filing an electronic version of the administrative record concerning the Final Determination to Close the Conception Junction, MO Post Office and Extend Rural Route Service. *Id.*

⁹ See Postal Service Comments.

B. The Law Governing Postal Service Determinations

Prior to making a determination to close or consolidate a post office, 39 U.S.C. §404(d)(1) requires that the Postal Service shall provide adequate notice of its intention at least 60 days prior to the proposed date of such action to persons served by such post office to insure they have an opportunity to present their views. The Postal Service's rules require posting of the Final Determination for at least 30 days. 39 CFR 241.3(g)(1)(ii).

In addition, prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404(d)(2) to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

The Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

The Postal Service also has regulations prescribing its requirements for closing post offices. 39 CFR 241.3.

V. THE POSTAL SERVICE'S FINAL DETERMINATION

After reviewing the Postal Service's Final Determination, the materials in the Administrative Record, the contentions presented by the Petitioner, and the Postal Service Comments, the Public Representative believes that the Postal Service has complied with the statute and its own rules. This includes posting procedures concerning the Final Determination on September 1, 2011. Moreover, the Postal

Service's Final Determination has adequately considered the effect of closing the Conception Junction Post Office on the community, including the effect on the volunteer fire department. In addition, the Postal Service has also considered the effect of the closing on postal services provided to Conception Junction customers, among those the recipients of the Maryville Daily Forum newspaper. In this regard, it appears that effective and regular service will be maintained after the closing.

However, the Final Determination's analysis of the effect on employees of closing the Conception Junction Post Office is inadequate as it relates to the calculation of economic savings, which are overstated. These flaws rise to the level of a failure to consider sufficiently the factors required by section 404(d). Consequently, the Final Determination should be remanded.

Section 404(d)(2)(A)(iv) requires consideration of "the economic savings to the Postal Service resulting from such closing." This requirement is impacted to a considerable degree by another requirement of Section 404(d): the effect on employees of the Postal Service employed at the office. 39 U.S.C. § 404(d)(2)(A)(ii).

The Postal Service estimates annual savings of \$66,295 from closure of the Conception Junction Post Office. FD at 9. Most of these savings are attributable to "Postmaster Salary (EAS-11, No COLA)" of \$51,792 and fringe benefits equal to 33.5 percent, or \$17,350. *Id.* The Postmaster at Conception Junction was promoted in May of 2010 and has not been replaced. Since the postmaster vacancy, an Officer-in-Charge (OIC) has operated the Conception Junction Post Office as a noncareer Postmaster Relief (PMR). *Id.* No other employee will be affected by the closure. *Id.*

Neither the Petitioner nor any other postal customer directly challenges the Postal Service's calculation of economic savings of \$66,295. Instead, the Petitioner (and customer comments) questions whether the savings are so significant to the Postal Service as to warrant closure of the Conception Junction Post Office. Initial Brief at 3; see *also* FD at 2-3. Petitioner also proposes a change in workhours in order to save cost and thereby retain service at the Conception Junction Post Office. Initial Brief at 3.

Nevertheless, the Public Representative considers the Postal Service's calculation of economic savings based upon the salary and benefits of an EAS-11 Postmaster to be faulty and therefore do not stand up to scrutiny. The Postal Service currently enjoys economic savings arising from installing an OIC with a reduced salary and no benefits rather than replacing the EAS-11 Postmaster. Thus, the Postal Service's calculation of cost savings must begin with the elimination of costs currently being incurred at Conception Junction Post Office *if that office is closed*. Cost saving calculations based upon the salary and benefits of a future EAS-11 Postmaster *if the Conception Junction Post Office remains open* are fictitious. If the Conception Junction Post Office remains open the Postal will incur costs upon the hiring of an EAS-11 Postmaster, not cost savings. Therefore, it is simply wrong to calculate economic savings based upon future Postmaster costs involving the possible continued operation of the Conception Junction Post Office when the costs to be saved are the real salary costs of the OIC upon closure of Conception Junction. The salary and benefits of the EAS-11 Postmaster should be replaced with the salary of the OIC in the calculation of economic savings.

However, the Postal Service's calculation of economic savings is faulty in another respect. The claim that the noncareer OIC "may be separated from the Postal Service" simply identifies one obvious outcome for the OIC. The obvious other outcome is that OIC may be transferred to another office or may otherwise continue employment with the Postal Service. The Postal Service provides no basis for determining whether the OIC will be separated from or will continue employment with the Postal Service. Nevertheless, the Postal Service assumes cost savings as if employees will be separated from Postal Service. Unless and until the Postal Service provides a justification for considering that there will be a reduction in employment associated with closure of the Conception Junction Post Office, the inflated economic savings claimed by the Postal Service should be reduced by excluding any assumed employee costs. In the case of the Conception Junction Post Office, those employee costs represent the amount of OICs salary.

After adjusting the calculation of economic savings by removing the EAS-11 Postmaster costs, and excluding any assumed savings associated with the OICs salary, the savings to the Postal Service are negative. The adjusted economic savings total –\$2,847 (\$5,220 Reduction in Annual Lease Costs, less \$8,067 Annual Cost of Replacement Service). All other things being equal, the Postal Service will be able to provide postal services to customers at less cost by continuing operation of the Conception Junction Post Office than closing it.

VI. CONCLUSION

The Postal Service's Final Determination to close the Conception Junction Post Office should be remanded to the Postal Service to remedy the deficiencies identified above.

Respectfully Submitted,

/s/ James F. Callow
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